

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

-----X	:	
In re:	:	Case No. 10-15099
	:	
KIEBLER RECREATION, LLC,	:	Chapter 11
d/b/a Peek 'n Peak Resort, :	:	
	:	Judge Randolph Baxter
Debtor.	:	
-----X	:	

**MOTION FOR EXPEDITED HEARING ON THE TRUSTEE’S MOTION PURSUANT
TO BANKRUPTCY RULE 9019(a) FOR ORDER APPROVING SETTLEMENT BY AND
AMONG THE TRUSTEE, THE DEBTOR, THE HUNTINGTON NATIONAL BANK
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

David O. Simon, the duly appointed Chapter 11 trustee in this case (the “**Trustee**”), hereby moves this Court, pursuant to section 105(a) of the Bankruptcy Code¹ and Bankruptcy Rule 9006(c), to enter an order scheduling an expedited hearing on the Trustee’s Motion, pursuant to Rule 9019(a) of the Federal Rules of Bankruptcy Procedure, For An Order Approving Settlement By And Among the Trustee, The Debtor Kiebler Recreation, LLC (the “Debtor”), The Huntington National Bank (“Huntington”), and The Official Committee of Unsecured Creditors (the “Committee”) [Docket no. 693] (the “**Trustee’s Motion to Compromise**”) for **July 19, 2011 at 10:00 a.m.** (Eastern Time) or as soon thereafter as the Court can accommodate or counsel can be heard.

In support of this motion, the Trustee says as follows:

¹ Unless otherwise indicated, all section references are to title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), all rule references are to the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), all references to “Local Bankruptcy Rules” or “LBR xxxx-x” are to the Local Rules for the United States Bankruptcy Court, Northern District of Ohio, and all references to “Chapter XX” are to chapter xx of the Bankruptcy Code.

Summary of Need for Relief Requested

1. An expedited hearing on July 19, 2011 is appropriate because two related (2) motions concerning substantially the same issues raised in the Motion to Compromise will be heard on July 12, 2011. The Trustee's Motion for Compromise is the third of three (3) related motions which seek approval to sell substantially all of the Debtor's assets and to resolve the certain disputes to facilitate the sale.

2. The first two (2) motions, which are scheduled to be heard on July 12, 2011, are: (1) the Joint Ex Parte Motion for Entry of Stipulation And Agreed Order Affirming Stipulation And Agreed Order Setting Terms of Sale Process , Appointment of Restructuring Officer And Marketing Consultant, Debtor in Possession Financing, And Settlement of Claims, With Certain Modifications [Docket no. 672] (the "**Motion to Approve Stipulation**"); and (2) the Trustee's Motion for Order Approving (i) Bidding Procedures in Connection with Sale of Substantially All of Its Assets, (ii) Form and Manner of Notice and Terms of Bid Process, and (iii) Scheduling Hearing to Consider Approval of Sale [Docket no. 681] (the "**Trustee's Motion to Sell**").

3. All parties are already aware of the issues raised in the Motion to Compromise because of the previously filed Motion to Sell and Motion to Approve Stipulation. In fact, several parties filed objections to the Motion to Sell and Motion to Approve Stipulation. As these objections and substantially all of the other issues raised in this Motion to Compromise will be addressed at the hearing on July 12, 2011 for the Motion to Approve Stipulation and Motion to Sell, an expedited hearing on July 19 is appropriate.

4. In addition, an expedited hearing is needed in order to complete any sale of the Debtor's assets prior to the start of the ski season and maximize the value of the assets of this estate for the benefit of its creditors. All parties recognize the need for the sale process to be

completed prior to the ski season. Disagreements, if any, all revolve around the distribution of the proceeds of sale; all agree on the need for a prompt sale.

Authority for the Relief Requested

5. Rule 9006(c)(1) provides, in pertinent part, that “when an act is required or allowed to be done at or within a specified time by the rules or by a notice given thereafter or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.”

Jurisdiction and Venue

6. This Court has jurisdiction over these Chapter 11 proceedings pursuant to 28 U.S.C. §§ 1334 and 157(a) and General Order No. 84 entered on July 16, 1984 by the United States District Court for the Northern District of Ohio. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Procedural History of the Debtor’s Case

7. On May 26, 2010 (the “**Petition Date**”), the Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code.

8. From the Petition Date through June 8, 2011, the Debtor continued in possession of its assets and operated its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

9. Following Mr. Kiebler’s refusal to act in early June 2011, counsel for the Debtor were permitted to withdraw² and the motions of (a) the United States Trustee for Region IX (the

² Order Approving Expedited Motion of Thompson Hine LLP to Withdraw As Counsel for Debtor [Docket no. 650].

“UST”)³ and (b) the official committee of unsecured creditors⁴ for the appointment of a chapter 11 trustee were granted,⁵ and on June 8, 2011, the UST selected David O. Simon as the Chapter 11 trustee in this case.⁶ On June 20, 2011, this Court entered its order approving the selection of the Trustee.⁷

Notice

10. Notice of this motion and the Motion to Compromise is being given to: (a) the Debtor, (b) counsel for Mr. Kiebler, (c) counsel for the Committee, (d) the UST, (e) counsel for the Debtor’s secured lenders, (f) all other parties on the Court’s electronic filing system electronic notice list, and (g) all parties on the Court’s manual notice list. In light of the nature of the relief requested herein, the Trustee submits that such notice is sufficient no other or further notice is required.

No Prior Request

11. No prior request for the relief sought in this motion has been made to this or to any other court in connection with this chapter 11 case.

WHEREFORE, the Trustee respectfully request that this Court enter an order in the form of the attached Exhibit A: (i) scheduling an expedited hearing on the Trustee’s Motion to

³ Emergency Motion of the United States Trustee for an Order Directing Appointment of a Chapter 11 Trustee [Docket no. 636].

⁴ Emergency Motion of Official Committee of Unsecured Creditors for Entry of an Order Appointing a Chapter 11 Trustee [Docket no. 633].

⁵ Agreed Order Granting Emergency Motion of the United States Trustee for an Order Directing Appointment of a Chapter 11 Trustee [Docket no. 649].

⁶ Report of Selection of Trustee of David Simon for Appointment as Chapter 11 Trustee [Docket no. 651].

⁷ Order Approving Selection of Trustee [Docket no. 669].

Compromise for Tuesday, July 19, 2011 at 10:00 a.m. (Eastern Time); (ii) approving the notice of the Motion to Compromise filed on July 9, 2011 [Docket no. 694](the “**Notice**”); (iii) finding that service of the Notice and the Motion to Compromise in the manner described herein shall be sufficient and adequate notice under the circumstances and in full compliance with the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules; and (iv) granting such other and further relief as the Court may deem proper.

Dated: July 11, 2011

Respectfully submitted,

/s/ David S. Blocker

Mary K. Whitmer (0018213)

James W. Ehrman (0011006)

David S. Blocker (0075523)

KOHRMAN JACKSON & KRANTZ PLL

1375 E. 9th Street, 20th Floor

One Cleveland Center

Cleveland, Ohio 44114-1793

Telephone: (216) 696-8700

Telecopier: (216) 621-6536

Email: mkw@kjk.com

jwe@kjk.com; dsb@kjk.com

*Counsel for David O. Simon, Chapter 11
Trustee*

CERTIFICATE OF SERVICE

I hereby certify that on July 11, 2011, a copy of the foregoing Motion for Expedited Hearing, etc. was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties on the Electronic Mail Notice List as set forth below. Parties may access this filing through the Court's system. I further certify that I caused a copy of the foregoing Motion for Expedited Hearing, etc. to be served on each of the persons on the Manual Notice List below by placing a copy thereof in the regular United States mail, first class postage prepaid, addressed as indicated, on July 11, 2011:

Electronic Mail Notice List

- Jeffrey Baddeley jbaddeley@ulmer.com
- Kathleen M. Bennett kbennett@bsk.com, khourihan@bsk.com; kdoner@bsk.com
- David S. Blocker dsb@kjk.com
- Lawrence C Bolla lbolla@quinnfirm.com, tsapper@quinnfirm.com;
dcornelius@quinnfirm.com; mmiller@quinnfirm.com;
npagliari@quinnfirm.com; mkruszewski@quinnfirm.com
- Carrie M Brosius cmbrosius@vorys.com, mborr@vorys.com
- Brian J. Butler bbutler@bsk.com, jheisler@bsk.com; kdoner@bsk.com
- Daniel A DeMarco dademarco@hahnlaw.com, hlpcr@hahnlaw.com
- Stephen A. Donato sdonato@bsk.com,
kdoner@bsk.com; tayers@bsk.com; tvanetti@bsk.com
- James W. Ehrman jwe@kjk.com, rlh@kjk.com; newpleadings@gmail.com
- Joseph D. Frank jfrank@fgllp.com, ccarpenter@fgllp.com
- Bridget Aileen Franklin bfranklin@brouse.com
- Garry M Graber ggrabber@hodgsonruss.com,
rleek@hodgsonruss.com; mmuskopf@hodgsonruss.com
- Joseph F. Gula jgula@kmgslaw.com,
jgula@roadrunner.com; mwernicki@kmgslaw.com
- Mark L. Hankin mhankin@hankinmazel.com
- Kenneth C Johnson kjohnson@bricker.com,
rdesignore@bricker.com; jearley@bricker.com
- Alan M Koschik akoschik@brouse.com, tpalcic@brouse.com
- Philip E Langer planger@porterwright.com, nrepka@porterwright.com
- John P. Lennon jplennon@trialadvocates.com
- Jeffrey M Levinson jml@jml-legal.com
- Marc Merklin mmerklin@brouse.com, tpalcic@brouse.com
- Ingrid S. Palermo ipalermo@bsk.com,
kdoner@bsk.com; sheffner@bsk.com; tvanetti@bsk.com
- Matthew E. Parkins mparkins@smdklaw.com, bmccullough@smdklaw.com
- Drew T Parobek dtparobek@vorys.com

- United States Trustee (Registered address)@usdoj.gov
- Andrew L. Turscak andrew.turscak@thompsonhine.com
- Susan C. Von Reusner susan.vonreusner@ag.ny.gov, lisa.burianek@ag.ny.gov
- Linda E White linda.white@ag.ny.gov
- Mary K Whitmer mkw@kjk.com
- Christopher B. Wick cwick@hahnlaw.com, hlpcr@hahnlaw.com
- Joseph Zagraniczny jzagraniczny@bsk.com, kdoner@bsk.com;
amasica@bsk.com;stemes@bsk.com;tvanetti@bsk.com
- Ronna Jackson ust34 Ronna.G.Jackson@usdoj.gov

Manual Notice List

Assessment Evaluation, Inc.
800 State Street, Suite 400
Erie, PA 16501-1322

Kiebler Recreation, LLC
10823 Mayfield Road
Chardon, OH 44024

Ciuni & Panichi, Inc
25201 Chagrin Blvd, #200
Beachwood, OH 44122

Precision Golf Construction, Inc.
Attn: Michael O'Donnell
PO Box 751
Chardon, OH 44024

Guy C Fustine
120 W 10th St
Erie, PA 16501

RSM McGladrey, Inc.
One S. Wacker Drive, Suite 800
Chicago, IL

Inglewood Associates, LLC.
John K. Lane, Managing Director
22239 Parnell Rd.
Shaker Heights, OH 44122

David O. Simon, Chapter 11 Trustee
1370 Ontario Street, Suite 450
Cleveland, OH 44113-1744

Internal Revenue Service Insolvency Grp
6
1240 E. 9th St. Rm 493
Cleveland, OH 44199

Deborah D. Strojny
8273 Canterbury Drive
Clymer, NY

/s/ David S. Blocker

David S. Blocker (0075523)